



coordinator, Lezlie Morris, testified at the preliminary hearing held before the Administrative Law Judge. The depositions of claimant's friend and former supervisor Anthony Varela, nurses' station clerk Michelle Plotner, registered nurse Teresa Clayton, and Lezlie Morris were also presented to the Administrative Law Judge as part of the preliminary hearing record.

The answer to the question whether claimant provided respondent with timely notice of accidental injury depends upon whether one believes claimant who testified he visited respondent's nurses' station up to six times per week and sometimes as often as two or three times per day with arm and shoulder complaints, or whether one believes the other witnesses who testified they did not recall or believe that claimant had advised them of his physical complaints. The records kept in the nursing station do not support claimant's allegations.

The Administrative Law Judge believed the other witnesses and found that claimant failed to provide timely notice as required by K.S.A. 44-520. Because the Administrative Law Judge had the opportunity to observe claimant testify, in this instance the Appeals Board gives some deference to the Judge's assessment of claimant's credibility. When considering the entire record, for preliminary hearing purposes, the Appeals Board also finds that claimant failed to provide respondent with timely notice of accidental injury.

As provided by K.S.A. 44-534a, as amended, preliminary hearing findings, including those of the Appeals Board, are not binding and subject to modification upon a full hearing on the claim.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated November 17, 1997, entered by Administrative Law Judge Kenneth S. Johnson should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1998.

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BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS  
D. Shane Bangerter, Dodge City, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director